

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

December 8, 2010

Lyle W. Cayce
Clerk

No. 10-10393
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ERICK ORTIZ-MALDONADO,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:09-CR-304-1

Before WIENER, PRADO, and OWEN, Circuit Judges.

PER CURIAM:*

Erick Ortiz-Maldonado (Ortiz) has pleaded guilty of illegal reentry after removal from the United States and has appealed his sentence. Ortiz contends that the district court erred in increasing his offense level by 16 levels, pursuant to U.S.S.G. § 2L1.2(b)(1)(A)(ii), because he was convicted prior to his removal of the Texas offense of aggravated assault. The Government contends that this issue is foreclosed by *United States v. Guillen-Alvarez*, 489 F.3d 197, 199-201 (5th Cir. 2007).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Ortiz concedes that this court's review is for plain error. *See Puckett v. United States*, 129 S. Ct. 1423, 1428 (2009). To show plain error, Ortiz must show a forfeited error that is clear or obvious and that affects his substantial rights. *Id.* at 1429.

Because Ortiz's argument attempting to distinguish *Guillen-Alvarez* involves an extension of the law, it could not have been clear or obvious error. *See United States v. Trejo*, 610 F.3d 308, 319 (5th Cir. 2010). The motion for summary affirmance is GRANTED and the alternative motion for an extension of time within which to file an appellate brief is DENIED AS UNNECESSARY. The judgment is AFFIRMED.